IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 357 OF 2002.

1. Joaquim Inacio Fernandes.

2. Arminda Elizabeth Fernandes,
r/o H. No.95, Mena,
Cavorim, Chandor, Salcete,
Goa. ... Petitioners.

VERSUS

1. Maria Carolina Valkes
alias Maria.

2. Antonio Alvito Assuncao Cruz.

3. Carl Faustino de Ataide Lobo.

4. Roy de Ataide Lobo.

5. Dr. Antonio Bernardo do Rosario,
Aulio de Ataide Lobo.

6. Maria Lucia Monteiro e
Ataide Lobo,
major of age, r/o Pelican
Apts., Fr. Agnelo Road,
Panaji, Goa. ... Respondents.

Mr. V. Menezes, Advocate for the Petitioners.

Mr. R.G. Ramani, Advocate for the Respondent No.1.

CORAM: P. V. KAKADE, J.

DATE: 12TH DECEMBER, 2002.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith by consent. Heard the learned counsel for both the sides.

2. This Writ Petition is aimed against the

impugned Order dated 17.10.2002 passed by the learned Civil Judge S.D., Mapusa, rejecting the application of the petitioners for time to file written statement on the ground that due to sickness he could not instruct his Advocate in time to file the written statement.

3. Perused the application for adjournment which was rejected, wherein it was clearly mentioned that the defendants No.6 and 7 submitted that defendant no.7 is sick due to fever and hence defendant No.6 could not contact the Advocate for giving instructions. The learned Trial Judge was of the opinion that no medical certificate was produced of the sickness of defendant no.7 and no ground was made out for adjournment. He has further observed that last and final opportunity was given to the defendants No.6 and 7 on the previous date. It was also observed that details of the sickness are not mentioned and therefore the Trial Judge was of the opinion that the adjournment was being sought on one pretext or the other.

4. Perusal of the record shows that the medical certificates dated 10.9.2002 as well as 17.10.2002 are attached, which support the plea of the petitioners that defendant no.7 was really sick. The fact of illness was also mentioned in the adjournment

application and therefore in my considered view the learned Trial Judge should have considered the plea favourably especially when it was pointed out that the petitioner was resident of the village Chandor, Salcete which is at a distance of more than fifty kilometres from Mapusa Court and which made it impossible for him to approach the medical practitioner to obtain a certificate.

5. Be that as it may, the fact remains that the plea of the petitioners appears to be genuine and in view of this position, the petition is allowed. Rule is made absolute in terms of prayer clause (a). The lower Court is directed to accept the written statement of the petitioners which shall be filed on the next date fixed by the learned Trial Judge and thereupon the suit shall proceed according to law.

6. Petition stands disposed of with no order as to costs. Both the parties to appear before the Trial Court on 20th December, 2002, on which date the Trial Court shall direct the petitioners the date on which the written statement is to be filed.

7. Authenticated copy allowed.

sl. P.V. KAKADE, J.